IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 402 OF 2003

Goldfilled Mercantile Company ...Petitioner

Versus

Jamnadas Murlidhar Jaisingh & Ors. ...Respondents

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Mr. Vaibhav Sugdare i/b Kishore Thakardas & Co. counsel for Petitioner

Mr. M.M. Vashi, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 15TH FEBRUARY, 2005

P. C.:-

1. Heard Mr. Sugdare the learned counsel for the petitioner and Mr.Vashi, the learned counsel for respondent. The respondent No.1 is no more and therefore, the contempt petition does not survive against the said respondent.

2. Civil Application No. 542 of 2003 filed in A.O. No. 499 of 2003 was admitted by this Court and pending further orders on the returnable date i.e. on 20.8.2003, ad interim relief in terms of prayer clauses (a) and (b) was granted by order dated 6.8.2003. The said prayer clauses read as under:-

"(a) that pending the hearing and final

disposal of the Appeal, the Respondents be restrained by an order and Injunction of this Hon’ble Court from in any manner carrying out any construction on the disputed property bearing C.T.S. No. 483 and C.T.S. No. 477 at village Shakily, Taluka Andheri, Mumbai;

(b) that pending the hearing and final disposal of the Appeal, the Respondents by themselves, their servants and agents be restrained by an order of Injunction of this Hon’ble Court from in any manner alienating, encumbering, transferring or creating third party rights or selling or disposing off or parting with possession of the disputed property or any part or portion thereof;"

. It is alleged that the respondents have subsequently engaged in the construction activities and thus violated the ad-interim injunction order granted in terms of prayer clause (a). In support of these allegations some photographs have been placed

on record.

3. The respondents have filed affidavit in reply and stated that no construction activities have been commenced on or after 23.5.2003 as alleged by the petitioner on the suit property i.e. open plot under CTS 483 and storing of material in the said open plot does not violate the order passed by this Court and relied upon by the petitioner. The ad-interim order specifically speaks about the construction and alienation/creation of third party interests. The photographs placed on record do not indicate that the construction activity has been started and merely because some materials stored on the open plot it does not mean that the construction activity has been commenced and the apprehension in the mind of the petitioners is no reason to give cause of action to move this contempt petition. On the face of the averments made in the affidavit and even on the basis of the photographs relied upon, there is no case made out to take cognizance in respect of the alleged contempt of this Court.

4. Hence, the contempt petition is rejected.